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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/790,216	03/02/2004	Ofer Davidi	3141/1	9856

7590 12/07/2004

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EXAMINER

LAVINDER, JACK W

ART UNIT	PAPER NUMBER
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3677

DATE MAILED: 12/07/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

## Office Action Summary

Application No.

10/790,216

Applicant(s)

DAVIDI, OFER

Examiner

Jack W. Lavinder

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☐ Responsive to communication(s) filed on \_\_\_\_.
- 2a) ☐ This action is FINAL. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 1-20 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-20 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 11 July 1931 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- \* See the attached detailed Office action for a list of the certified copies not received.

### Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)  
Paper No(s)/Mail Date \_\_\_\_.
- 4) ☐ Interview Summary (PTO-413)  
Paper No(s)/Mail Date. \_\_\_\_.
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: \_\_\_\_.

## **DETAILED ACTION**

### ***Claim Rejections - 35 USC § 103***

1. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

2. Claims 1, 2, 5, 6, 7, 8, 10, and 11, are rejected under 35 U.S.C. 103(a) as being unpatentable over Yacoubian, D466045.
3. Regarding claims 1, 2, 5, 6, 7, 8, 10, and 11, Yacoubian discloses a cross-shaped gemstone having four or more sets of parallel straight edges (longitudinal edges of the cross arms and the end edges of the cross arms) that bound the girdle of the stone. Three of the four pairs of edges are separated by a first distance and a fourth pair of edges are separated by a second distance about three times the length of the first distance. The claims limits the relationship between the first and second distance to be within 10% to 40% of each other, i.e., the second distance is 10%-40% greater than the first distance. The dimensions and proportions of the dimensions of a cut gemstone are a design effect variable. The reason for altering the dimensions and relationship of the dimensions is to produce a variety of different shapes or relationships of facets in order to make a gemstone more appealing to the consumer. One of ordinary skill in the art would have found it obvious to cut the gemstone of Yacoubian such that the distance between the end edges of the cross members are within the range of 10-40% larger than the distance between the side longitudinal edges of the

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cross arms in order to produce a smaller cross shaped gemstone. The smaller cross-shaped gemstone would be more affordable and appealing to a larger number of consumers.

4. Claims 1-20 are rejected under 35 U.S.C. 103(a) as being unpatentable over Senanayake, 5190024.

5. Senanayake discloses in figure 10 a gemstone cut from a tetrahedron shaped stone exactly as claimed by the applicant. Senanayake is silent as to the relationship between the distances that separate the pairs of straight edges. Although Senanayake is silent, the drawings show a second distance, i.e., top to bottom diagonal distance between the end faces, which appears to be within the claimed range of 10%-40%.


6. Assuming Senanayake does not disclose the claimed range, it is considered that the dimensions and proportions of the dimensions of a cut gemstone are a design effect variable. The reason for altering the dimensions and relationship of the dimensions is to produce a variety of different shapes or relationships of facets in order to make a gemstone more appealing to the consumer. One of ordinary skill in the art would have found it obvious to cut the gemstone of Yacoubian such that the distance between the top and bottom (as viewed in figure 10) edges are within the range of 10-40% larger than the distance between the side (left to right sides) edges in order to produce a marketable gemstone based on the starting rough cut stone to be more affordable and appealing to a large number of consumers.

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Any inquiry concerning this communication or earlier communications from the examiner should be directed to Jack W. Lavinder whose telephone number is 703-308-3421. The examiner can normally be reached on Mon-Friday, 9-4:00pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Judy Swann can be reached on 703-306-4115. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

  
Jack W. Lavinder  
Primary Examiner  
Art Unit 3677

12/01/04